IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 736 OF 2006

Arihant Co-op Bank Ltd. & Anr. .. Petitioners

versus

Smt.Toral Jiten Khatadia & Anr. .. Respondents

...

Ms.Sapna Samant for the petitioner.

Mr.B.B. Parekh with Mr.A.W. Ansari i/b Mr.Q.M Ashfaq for the respondents.

CORAM : D.G. KARNIK, J

DATED : 3rd March 2006.

P.C.:

1. This petition is directed against the order dated 30th January 2006 passed by the Maharashtra State Cooperative Appellate Court dismissing the petitioners' revision application.

2. The petitioner Bank granted a loan to M/s.J.K. Traders and obtained an award for recovery of the amount on 15th September 2004. As the money was not paid, award was put into execution. Mrs.Jayashree Khatadia, the respondent no.2 herein is a partner of the borrower and is a co-owner of the flat no.A-1 in Sea Gull Co-operative Housing Society Limited (for short "the flat"). Smt.Toral Jiten Khatadia, the respondent no.1 herein, is the other co-owner. In execution of an award passed by the Co-operative Court, the petitioner attached the flat and dispossessed her. The respondent no.1 filed an application before the Co-operative Court for vacating the attachment contending that she was a co-owner of the flat which could not be attached in the absence of any award against her. By an order dated 30th December 2005, the Co-operative Court allowed the application and vacated the attachment of the flat and ordered restoration of possession to the respondent no.1. The order was confirmed in the revision. That order passed in this revision is impugned in this petition.

3. It is not disputed in this petition that respondent no.1 was not the borrower and was not the

partner of the firm against whom the award has been passed. The share certificate of Sea Gull Co-operative Society Limited shows that the respondent no.1 is a co-owner of the flat. In the circumstances, the share of the respondent no.1 in the said flat could not be attached in execution of the award passed against the firm in which she was not a partner nor could she be dispossessed. At the most the petitioner could attach the undivided share of the respondent no.2 but could not dispossess the respondent no.1.

4. For these reasons, I find no error in the impugned order. Writ Petition is therefore rejected summarily.

(D.G. KARNIK, J)